

ELIZABETH FRANCIS

IBLA 82-55

Decided November 12, 1981

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 88695 through N MC 88700.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of

Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Elizabeth Francis, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Elizabeth Francis appeals the October 14, 1981, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Maxine #1 through Maxine #6 lode mining claims, N MC 88695 through N MC 88700, abandoned and void because no notice of intention to hold the claims or evidence of assessment work performed on the claims was filed with BLM by December 30, 1979, or December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR Subpart 3833. 1/ The claims were located in December 1954. Copies of the official record of the notices of location and proofs of labor were filed with BLM September 7, 1979, but no notice of intention to hold or evidence of assessment work was filed during calendar year 1980.

[1] Section 314 of FLPMA requires the owner of unpatented mining claims located prior to October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to

1/ BLM erroneously stated that a notice of intention to hold or evidence of annual assessment work was due on or before December 30, 1979. For a pre-FLPMA claim such a document was required to be filed on or before October 22, 1979. See discussion, infra.

file with BLM a copy of evidence of the assessment work performed on the claim or a notice of intention to hold the claim within 3 years after the date of the Act, i.e., on or before October 22, 1979, and before December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976). The statutory requirements and consequences are replicated in 43 CFR 3833.1-2, 3833.2-1, and 3833.4.

Appellant states she was unaware of the requirement to file a proof of labor annually with BLM. With her notice of appeal she submitted copies of the proofs of labor recorded in the records of Nye County, Nevada, August 25, 1980, and August 14, 1981.

[2, 3] Section 314 of FLPMA specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of each calendar year thereafter. Such filing must be made in both the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment of recording in the proper county of evidence of assessment work or a notice of intention to hold the mining claim does not relieve the owner of the claim from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314, FLPMA, are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Fahey Group Mines, Inc., 58 IBLA 381 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra. As the Board stated in Lynn Keith, supra:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

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